BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 18-07-003 (Filed July 12, 2018)

COMMENTS OF THE CALIFORNIA ENERGY STORAGE ALLIANCE ON THE ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENTS ON STAFF PROPOSAL TO CLARIFY AND IMPROVE CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Energy Storage Alliance ("CESA") hereby submits these comments to the *Assigned Commissioner's Ruling Requesting Comments on Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program* ("Ruling"), issued by Assigned Commissioner Clifford Rechtschaffen on February 27, 2020. Pursuant to the Ruling, CESA is also serving these comments to Rulemaking ("R.") 14-11-001, the Confidentiality proceeding, and R.16-02-007, the Integrated Resources Plan ("IRP") proceeding.

I. INTRODUCTION.

CESA generally supports the Commission's intended goal to promote transparency and public interest and recognizes that the Renewables Portfolio Standard ("RPS") Program must account for many new entrants and more parties.[1] However, CESA is very concerned with the Staff Proposal that, among other things, proposes to have contract prices and information be

[1] Ruling at 3.

publicly disclosed for investor-owned utility ("IOU") procurement contracts requiring Commission approval via Resolution, submitted for approval via Advice Letter, or Application.[2] Similarly, for contracts procured and executed by community choice aggregators ("CCAs") and energy service providers ("ESPs") and thus not requiring Commission approval, the Staff Proposal proposes to have all contract prices publicly disclosed six months after the contract is signed or 30 days after deliveries of energy and/or renewable energy credits ("RECs"), whichever occurs first.[3]

While the Staff Proposal focuses on RPS procurement contracts from each of the load-serving entity ("LSE") types, these modified confidentiality rules have the potential to also implicate energy storage resources paired with RPS-eligible resources as well as standalone energy storage contracts, given that confidentiality requirements have generally been made consistent for most or all resource types in reference to Decision ("D.") 06-06-006. The Staff Proposal, if adopted, would require the disclosure of market-sensitive and competitive information and introduce significant regulatory uncertainty, such that it would chill the market for participation in any LSE solicitation. Given the state's long-term decarbonization goals, CESA believes that the Staff Proposal would have adverse effects on market participation from renewable and storage developers and consequently jeopardize the achievement of said goals.

In these comments, CESA offers our responses to the questions posed in the Ruling but also offers the following key observations and issues that we see in advancing the Staff Proposal further:

- The Staff Proposal does not sufficiently justify why confidentiality requirements must be modified.

[2] Staff Proposal at 9-12.

[3] *Ibid* at 13-14.

- The Commission has already affirmed the need to maintain confidentiality rules pursuant to D.06-06-006 to preserve competition.
- The Commission should refine grid-service product definitions and provide more granular grid-need information to guide and incentivize resource procurement.
- A reasonable lag for public disclosure of contract prices and bid information is needed to sufficiently protect market-sensitive information and preserve competition.

II. THE STAFF PROPOSAL DOES NOT SUFFICIENTLY JUSTIFY WHY CONFIDENTIALITY REQUIREMENTS MUST BE MODIFIED.

CESA is unclear on the rationale for modifying confidentiality requirements at this time. The only justification that CESA has gleaned from the Staff Proposal is that the Commission staff seek to generally promote transparency and public interest in the program.[4] By "public interest", CESA interprets staff's intention as reporting to the Legislature on progress and status of the RPS Program, pursuant to Senate Bill ("SB") 100. However, in CESA's assessment, there does not appear to be a requirement from the Legislature to publicly disclose and report the contract prices for every project bid into the RPS Program, other than a more system-level joint report on actions that the joint agencies plan to take to achieve the 100% zero-carbon electricity goals by 2045,[5] and general reporting requirements to ensure that retail sellers are "taking all reasonable actions under [their] control" to achieve the procurement requirements.[6] It would be an overreach by the Commission to require the reporting and public disclosure of contract prices since it does not appear to be something that was requested by the Legislature. For the purposes of reporting to the

[4] Ruling at 1 and Staff Proposal at 4, 7, and 14.

[5] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB100

[6] Public Utilities Code Section 399.15(b)(6).

Legislature, staff has not justified why alternative approaches, such as presenting information in aggregate,[7] are not sufficient.

Furthermore, the Staff Proposal does not articulate the problem that it is seeking to solve. If the "public interest" is not defined by the Legislature, CESA is unclear on which parties or stakeholders would be disadvantaged or prejudiced by the current confidentiality rules. CESA, like many other "public interest" parties or "market participant" stakeholder groups, do not have access to market-sensitive contract price data but is not hindered by the current confidentiality rules in place in reviewing and assessing advice letter filings or applications from the IOUs. In the public, redacted versions of these submissions to the Commission for contract approval, CESA is able to shape the *pro forma* contracts and/or the bid evaluation criteria prior to the solicitation and to review qualitative information reported by the IOUs on net market value ("NMV") scores (*e.g.*, net positive or negative) and rankings. In our experience, such a process has been sufficient to vet filings for contract approval, which is likely the case for many other parties. If that is not the case, staff has not identified the "public interest" parties that have been disadvantaged or prejudiced by the current confidentiality rules.

Importantly, there are important stakeholder groups that do have privileged and transparent access to market-sensitive and confidential information that provide viable checks and due process. Energy Division staff and ratepayer advocate groups, such as the Public Advocates Office ("PAO"), are able to access this confidential information to represent the interest of ratepayers and the broader policy objectives of the state. Each IOU also has Procurement Review Groups ("PRGs") and contract for independent evaluators ("IEs") in order to ensure that the solicitation is

[7] This is similar to what is done in the Annual Resource Adequacy ("RA") Report, where aggregated and averaged System, Local, and Flexible RA prices are reported.

run in a fair and reasonable process while providing a third-party assessment of the solicitation shortlisting and selection results. Moreover, except for RPS resources, contract summaries for those seeking Commission approval are made public regarding the contract's counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract, and online date[8] – information categories that should be sufficient to promote transparency and balance against the need for confidentiality to promote market participation and competition. With such a framework and requirements in place, CESA is not convinced of the need for broader public disclosure of contract prices as well as other information categories that were highlighted. Contracts submitted for approval have been rejected for not being cost-effective in the past[9] – an outcome that was able to be reached without having to publicly disclose contract prices, except to privileged stakeholders, with all other "public interest" stakeholders having qualitative information reported to them. Staff has not demonstrated why this current status quo process is insufficient.

In sum, CESA seeks clarification on the staff's intent for the revised confidentiality rules that the current rules prevent or reduce the ability of the Commission to reasonably and effectively administer and monitor the RPS Program. At most, the contract summaries from D.06-06-006, as it stands today for energy storage contracts, should be sufficient information, given that the Commission and ratepayer advocates already have access to privileged and confidential contract information, and because PRG/IE bodies are in place to provide an independent assessment of

[8] D.06-06-006 Appendix 1 at 15-17.
http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/57774.PDF

[9] See, for example, D.16-09-004 and D.16-12-004 that rejected the Application submitted by Pacific Gas and Electric Company ("PG&E") for contracts for approval resulting from their 2014 Energy Storage Request for Offers ("RFO"). Two 1-MW distribution-connected storage contracts and one 4-MW customer-sited energy storage contract were rejected by the Commission for the lack of cost-effectiveness.

solicitation processes and results. CESA's concerns apply equally to the procurement contracts of CCAs and ESPs, whose contracts should not be subject to such an overreach in public disclosure requirements, as proposed by staff.[10]

III. THE COMMISSION HAS ALREADY PREVIOUSLY AFFIRMED THE NEED TO MAINTAIN CONFIDENTIALITY RULES PURSUANT TO DECISION 06-06-006 TO PRESERVE COMPETITION.

To ensure robust market participation going forward in the RPS Program and other LSE competitive solicitations, contract price data must be kept confidential, with D.06-06-006 guidelines providing sufficient protections of market-sensitive and competitive information. Otherwise, CESA fears that market participants will not participate in these competitive solicitations. The Commission has already affirmed the need to maintain confidentiality rules pursuant to D.06-06-006 for this very reason. In R.10-12-007, the Commission initially propose to have all energy storage bid data be treated as non-confidential, with the cost of successful bids protected under confidentiality for one year following the approval of a storage contract.[11] Subsequently, however, D.13-10-040 was issued that affirmed that energy storage contracts procured within the Energy Storage Framework would be subject to consistent confidentiality requirements as set forth in D.06-06-006.[12] The Commission should again recognize that confidentiality rules are important to ensure that parties are willing to participate in competitive solicitations. With low or minimal participation, the competitiveness of the solicitation results will also be adversely affected.

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[10] Staff Proposal at

[11] *Assigned Commissioner's Ruling Proposing Storage Procurement Targets and Mechanisms and Noticing All-Party Meeting* issued in R.10-12-007 on June 10, 2013 at 20.
http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M065/K706/65706057.PDF

[12] *Decision Adopting Energy Storage Procurement Framework and Design Program*, D.13-10-040, issued on October 21, 2013 in R.10-12-007 at 65.

Notwithstanding the adverse effects of disclosing contract prices in general, the Staff Proposal goes further in requiring all bid information to be disclosed, not just from selected bidders but also from shortlisted and non-shortlisted bidders, and bid prices for these collectively "non-selected" participants would be aggregated. In publicly disclosing competitive positioning around specific bid information (though not bid price), market participants may be deterred from participating in future solicitations, as it reveals project development strategies to other market participants. While less market-sensitive than the actual negotiated contract price, staff has not justified the need for disclosing this additional bid information, other than to "[increase] planning coordination" and to enable "stakeholders" seeking to participate. The benefits of this planning coordination are not specified, and who and how stakeholders would benefit is not detailed. For these reasons, CESA only sees risks of market-chilling effects on future RPS and other all-source or resource-specific procurements with minimal or unspecified benefit.

IV. THE COMMISSION SHOULD REFINE GRID-SERVICE PRODUCT DEFINITIONS AND PROVIDE MORE GRANULAR GRID NEED INFORMATION TO GUIDE AND INCENTIVIZE RESOURCE PROCUREMENT.

The Staff Proposal seemingly proposes to have the entire least-cost, best-fit ("LCBF") evaluation results from the IOUs to be publicly disclosed for RPS procurement contracts submitted for Commission approval via an application.[13] CESA is unclear on the public benefit that would come from disclosing all of this information for contracts submitted for approval. Based on the information identified for public disclosure and the characterization of applications for RPS contract approval as presenting "complex problems", the Commission may be seeking to ensure that the specific scores and elements of the LCBF criteria align with Commission policies, grid needs, etc. However, rather than publicly disclosing bid information in such a sweeping way,

[13] Staff Proposal at 12-13.

CESA believes a better approach is to have the Commission establish policies and frameworks that shape the IOUs' and other LSEs' bid evaluation criteria. For example, every LSE will likely select the "best-fit" and/or most cost-effective resources and shape their bid evaluation criteria accordingly if, for example, the Commission establishes appropriate RA capacity counting conventions (*e.g.*, to value hybrid resources) and fixes RA eligibility and bundling rules (*e.g.*, to better value flexible and renewable integration resources). Rather than publicly disclosing and assessing how each LSE scored different resources on the "capacity" criterion and the "cost of integration" criterion, LSEs would have a self-interest to ensure that their bid selections reflect these grid-service definitions and needs and achieve them in a LCBF fashion.

V. A REASONABLE LAG FOR PUBLIC DISCLOSURE OF CONTRACT PRICES AND BID INFORMATION IS NEEDED TO SUFFICIENTLY PROTECT MARKET-SENSITIVE INFORMATION AND PRESERVE COMPETITION.

Depending on the path for Commission approval, the Staff Proposal proposes to disclose contract prices in the Draft Resolution (*i.e.*, Tier 3 Advice Letters), in the Tier 2 Advice Letter (*e.g.*, Renewable Auction Mechanism ["RAM"] contracts), and in prepared testimony for Applications. In making this justification, staff argued that bilateral negotiations are "over" or the utility's position is not in danger.[14] However, CESA finds this logic flawed and believes that such a cut-off point for disclosing contract prices only serves to introduce market and regulatory uncertainty. Market-sensitive information would be publicly disclosed without certainty of contract approval and project deployment, leading to selected bidders revealing confidential data to other competitors without contract approval. As a result, bidders may decide against participating in competitive solicitations given the risk of revealing confidential data and market positions without any certainty that their information will be protected until executed contracts are

[14] Staff Proposal at 9-12.

"unappealable" and deployed.[15] In other words, the risk of disclosing competitive information is certain while the odds of contract approval are not. In this environment, market participants are unlikely or much less likely to participate in competitive solicitations, which results in resource procurements not selecting from a robust pool of project bids and the most feasible cost-effective outcomes.

At the same time, CESA sympathizes with the staff's concern with the extremely long lag of price disclosure for certain projects, where they anecdotally cite an example project that did not have prices disclosed until over nine years later. However, the proposed points in time for price disclosure (*e.g.*, termination of negotiations) does not serve the public interest in inviting the widest range and most competitive bidders to resource solicitations. A more appropriate point in time should be established to balance transparency with market certainty and competitive outcomes. Even if it is determined to be prudent to be revealed at a certain point in time with a reasonable lag, the Commission must also aggregate and anonymize data to protect market competition. Before establishing this threshold, staff should first provide more detailed justifications for modifying the current confidentiality rules, as discussed in our previous sections.

VI. RESPONSES TO QUESTIONS.

Question 1: Would the proposal as a whole (or the component being discussed) promote transparency and the public interest with respect to the RPS program? Why or why not? What changes would improve the proposal with respect to its impact on transparency and the public interest in the RPS program?

The goal of promoting transparency should be balanced against the interest of commercial parties in protecting the confidentiality of market-sensitive and competitive information. The current Staff Proposal swings too much in favor of transparency without considering the impact

[15] Generally, developers will not post deposits until the contract is approved by the Commission.

that contract price disclosure, without sufficient regulatory certainty and time lag, could deter prospective bidders from participating in competitive solicitations. A better balance must be struck, where some modifications to the time lag of price disclosure under the current confidentiality rules may suffice.

Question 2: **Would the proposal as a whole (or the component being discussed) contribute to improved decision-making by the Commission? Why or why not? What changes would improve the proposal with respect to its impact on improving decision-making about the RPS program at the Commission?**

No, the Staff Proposal has not explained how Commission decision-making is hindered by the current confidentiality requirements and rules.

Question 3: **Would the proposal as a whole (or the component being discussed) contribute to improved coordination between the Commission and other agencies and organizations with respect to California's energy policy, procurement planning and/or transmission planning. Why or why not? What changes would improve the proposal with respect to its impact on improving coordination with other agencies about procurement and transmission planning?**

No, the Staff Proposal has not explained how public disclosure of prices for executed contracts and all other non-price information for non-selected bids would support coordination. The Commission should specifically highlight how the Commission's IRP planning and modeling and the California Independent System Operator's ("CAISO") transmission planning. How this information could be used is not detailed. For example, how would disclosed *current* contract price information help with prospective planning using *forecasted* prices, considering the Commission will need to identify forecasting data sources and select a resource price forecast anyways? How would the project information for a non-selected bid inform future planning or resource procurement? Without clarification on what coordination that staff wants to achieve, CESA has no changes to propose at this time.

Question 4: **Would the proposal as a whole (or the component being discussed) improve the value received by the customers of retail sellers from RPS procurement? Why or why not? What changes would improve the proposal with respect to the value to customers of retail sellers?**

No, the Staff Proposal will likely increase costs to LSE customers due to reduced appetite to participate in their competitive solicitations. A thinner pool of bidders will thus prevent customers from being more certain that the most cost-effective and best-fit resources were selected and deployed. Unless otherwise justified, some modifications to the time lag of price disclosure under the current confidentiality rules may suffice.

Question 5: **Would the proposal as a whole (or the component being discussed) contribute to the long-term stability of the RPS market? Why or why not? What changes would improve the proposal with respect to the long-term stability of the RPS market?**

No, see our response to Question 4 above.

Question 6: **Would the proposal as a whole (or the component being discussed) provide appropriate protection to information for which there is a legitimate need for confidentiality? Why or why not? What changes would improve the proposal with respect to the protection of information for which there is a need for confidentiality?**

No, see our comments in Section III above, where we propose that contract summaries in line with D.13-10-040 and D.06-06-006 would most appropriately protect information while providing sufficient levels of transparency.

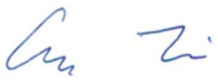
Question 7: **What, if any, legal issues might exist with respect to the implementation of the proposal as a whole (or the component being discussed)? What changes if any, would improve the proposal with respect to reducing or eliminating legal issues regarding its implementation? What changes to the existing legal framework, if any, would reduce or eliminate the issues identified?**

CESA has no response at this time.

VII. CONCLUSION.

CESA appreciates the opportunity to submit these comments on the Ruling and looks forward to working with the Commission and stakeholders in the RPS proceeding.

Respectfully submitted,



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